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FLOOR DEBATE

April 30, 2001 LB 435

issue a ruling on the matter. Such ruling would be binding, although either party would have authority to seek judicial review according to the contested case procedures in the Administrative Procedures Act. As introduced, the bill imposes a standard of reasonability upon the parties. The standard is fair market value. When negotiating lease renewal, failure to offer a lease at fair market value would activate an obligation upon the lessor to compensate the tenant for improvements on the property. A tenant refusing to accept fair market value would forfeit any right to compensation provided under the bill. Any costs incurred by the department would be assessed to the parties. In effect, LB 435 declares a public interest in the protection of businesses located on property owned and controlled by railroads for potentially unequal bargaining positions. I brought this bill out of concern for the fact that many of the agricultural support industries serving agriculture are at a disadvantage in negotiating lease terms. With fixed investments and dependency on rail access in many cases, such businesses are in a vulnerable position and the conditions exist for landlords to take advantage of the situation. Keep in mind that this bill does not deprive property owners of fair market value or reasonable rates of return in the rental rates charged. It does not interfere with private attempts to arrive at reasonable lease terms or conditions through negotiation. However, failing that, the bill provides for a third party means of determining that issue. I believe any utilization of the lease negotiation process by the Department of Agriculture will be rare. We inquired with Iowa about how frequently its railroad lease negotiation law has been utilized. The Iowa Department of Transportation informed my office that only one dispute was submitted and that case was settled privately before it was decided. In other words, the bill is effective if it simply improves the leverage of tenants in negotiating leases. I'd like to mention that Iowa's law was upheld on several constitutional grounds in 1991, a decision by the Iowa Supreme Court. Essentially the court found that the interests served by the law are of sufficient public interest to sustain the action of the Legislature to provide for dispute resolution in this manner. LB 1432 from last year was also examined by our own Attorney General who reached similar conclusions that the law would survive constitutional challenges on several grounds. I